

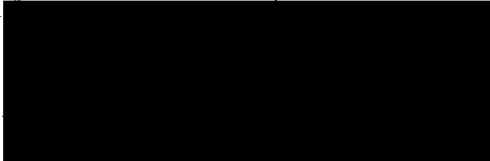


U.S. Department of Justice

Immigration and Naturalization Service

B2

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

File: WAC 98 190 51548

Office: California Service Center

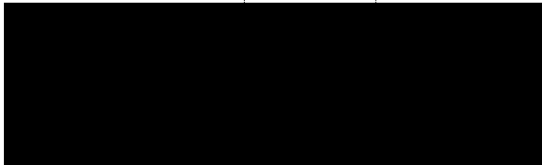
Date: DEC 29 2000

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



Identifying the person  
prevent clearly understood  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

In this decision, the term "prior counsel" shall refer to Esther Wang, who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a badminton player. The regulation at 8

C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Prior counsel asserts that the petitioner has won such an award, specifically a gold medal at the 1994 French Open Badminton Championships. Given that badminton is an Olympic event, it is not entirely clear that a medal from the French Open is more prestigious or well-known than an Olympic medal. Given the restrictive nature of the visa classification, we believe that the provision for eligibility based on a single international award must be construed very narrowly, applying only to a very small number of prizes which are immediately recognizable worldwide, such as an Olympic medal, the Nobel Prize, the Academy Award and so on.

Barring the alien's receipt of a major, international award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner has won prizes at numerous national and international competitions, such as the French Open, the East Asian Games and the Chinese National Doubles and Mixed Doubles Tournaments. The petitioner won first place prizes at national competitions in 1991, 1994, 1995 and 1996, and at an international competition in 1994, with several other top-five rankings. The petitioner's last competition, only weeks before the filing of the petition in late June 1998, was the U.S. Open Badminton Championships, in which the petitioner was eliminated in the semifinal round.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

Prior counsel states:

Petitioner is a member of the Sports Committee of the People's Republic of China, duly elected to be Level II Athlete in August 1985, and was awarded a Master of [S]ports by the Sports Committee of the People's Republic of China in December 1991, which require outstanding achievements of their members.

There is no evidence that the petitioner is a "member" of the Sports Committee; possession of certificates from that committee does not establish his membership. One of the certificates is

dated October 1985, at which time the petitioner was 14 years old. The designations "Level II Athlete" and "Master of Sports" appear, from the certificates in the record, to recognize the petitioner's performance in competition. There is no evidence that he was "elected" to these designations.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

China Sports Daily has covered several badminton tournaments in which the petitioner finished on top or high in the rankings. The articles are about the competitions themselves, and identify the petitioner among many other competitors. The articles are not "about the alien" in any meaningful sense; otherwise, they are "about" every single player mentioned. The articles do not establish that the petitioner has attracted more media attention than other badminton players in China.

Nanning Evenings and Guangxi Daily appear to be local or provincial, rather than national, publications.

The petitioner submits letters from Bao Tong, director of International Affairs at the Badminton Association of the People's Republic of China, and Jincan Zhou, coach of the China National Badminton Team and visiting coach of the U.S. National Badminton Team. Bao Tong attest without further comment to the petitioner's winning several competitions between 1993 and 1995. Jincan Zhou states that the petitioner "is an outstanding, world-class badminton player." Neither official attests to any significant victories by the petitioner since 1995.

Documentation from the Badminton Association of the People's Republic of China indicates that, in June 1995, the petitioner was ranked #12 in the world in mixed doubles. It is unclear how long he held this rank. The same documentation states that the petitioner "was admitted into [the] Guangxi Badminton Team in 1986 and then into the National Badminton Team in December 1993. Currently he is in the Guangxi Badminton Team." There is no explanation offered for the petitioner's apparent demotion from the national team to a provincial team.

The director instructed the petitioner to submit further evidence to fulfill the regulatory criteria. In response, the petitioner has submitted evidence regarding his activities during late 1998 and 1999. With the exception of one event in mid-June 1998, all of these events took place after the filing of the petition in late June 1998. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. While the petitioner's

activities in late 1998 and 1999 establish his intention to continue competing, they cannot retroactively demonstrate that he was eligible for the classification sought as of June 1998.

The director denied the petition, stating "the record contains insufficient information to show the petitioner has risen to the top in the field of badminton, or that he has received sustained national or international acclaim." The director added that many of the petitioner's awards appear to be local or regional, rather than national or international, in nature.

On appeal, counsel argues that the director "mischaracterized" the awards, when "[i]n fact the awards are both national and international in scope." Certainly, many of the petitioner's awards are clearly from national and international competition. Even so, while winning a major international prize is *prima facie* evidence of extraordinary ability, lesser prizes cannot similarly establish eligibility without supporting evidence. Counsel repeats prior counsel's claim that the medal from the French Open constitutes a major international prize, but does not establish that the medal represents the highest award possible in the sport. While the petitioner has won a number of medals and prizes, none appears to have the prestige and global recognition of an Olympic medal. It is plain from the construction of the regulations that a finding of eligibility cannot rest entirely on lesser awards, regardless of their quantity. The petitioner cannot compensate for failure to fulfill at least three criteria by submitting an abundance of evidence pertaining to one criterion.

The remainder of counsel's appellate brief essentially repeats arguments offered by prior counsel with the initial filing. For example, counsel repeats, word for word, the wholly unsubstantiated claim that "Petitioner is a member of the Sports Committee of the People's Republic of China."

Counsel also treats the submission of "letters of recommendation" as one of the ten criteria, which it is not. The initial letters simply affirm the petitioner's participation in competitions, and letters submitted later refer to the petitioner's activities in California after the filing date.

In a letter submitted on appeal, Dean Schoppe of HL Corporation states that the petitioner "is currently our national champion in men's doubles and has won various tournaments throughout the USA since coming here." We do not dispute that the petitioner has won numerous tournaments. The structure of the regulations, however, do not allow for a finding of eligibility based solely on lesser national and international prizes, and the petitioner's arguments and evidence regarding other criteria have not been persuasive. Furthermore, the petitioner was not the U.S. national champion when he filed the petition, and attaining that title a year and a half later cannot reverse an otherwise unfavorable finding. Evidence and circumstances which did not exist at the time of filing are

best considered in the context of a new petition rather than on appeal or on motion.

Also submitted on appeal is a one-page article from Detour, featuring an interview with the petitioner. This article, unlike the previously submitted materials, is assuredly about the petitioner and his work in the field. The article is undated, and therefore it not only fails to meet the plainly stated requirements of 8 C.F.R. 204.5(h)(3)(iii), but it is impossible to determine whether this article was published prior to the filing date. Given the petitioner's failure to submit the article prior to the appeal, we see no reason to believe that the article was published prior to June 1998. We note that the only badminton competition identified by name in the article is the Olympic event.

The petitioner is indisputably a successful badminton player, having won prizes in many national and international events. Not every international prize, however, is a major international prize, as is clear from the regulatory reference to lesser international prizes. The statute demands "extensive documentation" of eligibility, which the regulations have interpreted to mean a variety of evidence, fulfilling a range of criteria, rather than simply a surfeit of evidence in one criterion; national acclaim requires more than simply winning lesser competitions. While the petitioner has certainly enjoyed success in his field, we cannot conclude that this success is tantamount to sustained national or international acclaim as contemplated by the statute and regulations.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a badminton player to such an extent that he may be said to have achieved sustained national or international acclaim as defined in Service regulations. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.